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February 10, 2017

Audra Schwartz
Chairperson
Town of Monroe Planning Board
1465 Orange Turnpike
Monroe, NY 10950

RE: Mikvah Yisroel

Dear Audra:

I have been copied on Brian Nugent's letter of February 8, 2017 and on a string of emails regarding this matter. Because I am mentioned in those emails, I would like to clarify my involvement and to offer some background information. This factual recitation is not a privileged communication.

On February 6, 2017, I received a telephone call from Kate Troiano. Peter Martin was on the telephone with her. I was told that an elderly gentleman who lived near Mikvah Yisroel had visited town hall to report that Isaac Walter, a representative of Mikvah Yisroel, had approached him and offered \$4,000 as reimbursement¹ for the cost of increasing the depth of his well. I was told that the well deepening work had already been done and that the gentleman's earlier-claimed problem of draw-down from the Mikvah well had been solved. However, Mr. Walter also conditioned his offer of reimbursement on the elderly gentleman's promise not to attend any public hearing the planning board might hold.

I told Kate she should immediately report what she told me to all members of the planning board. I also said that, while the \$4,000 offer was serious and relevant to the planning board's review of the mikvah applicant before it, the offer did not constitute bribery in the criminal law sense because the offer of payment was not made to a public

¹ I was told later in the conversation that this did not represent the full cost of deepening the well.

official. I did not say, as apparently reported to Brian Nugent, that I “did not see any issue concerning this matter.” I assumed (I now know incorrectly) that Kate did what I suggested and that she notified all members of the planning board of what was said by this gentleman.

When I arrived to attend the February 7, 2017 planning board meeting, Kate approached me before the meeting began and asked me if the planning board members should discuss the gentleman’s allegation in an executive session. I told her I did not believe the matter qualified for an executive session discussion but that it was an entirely appropriate topic for the work-session discussion scheduled for that evening. I then believed that all planning board members knew of the allegations. I was somewhat surprised that it was not discussed during the meeting that evening but I assumed that the members of the board thought it might better be discussed during the public hearing to be held at a future date.

I called you on Wednesday morning (in response to an urgent message) and was shocked to learn that you knew nothing of the allegations made by the elderly gentleman or of Kate’s suggestion during the evening prior that an executive session be held to discuss those allegations. The string of emails began later that day.

Well Draw-Down Complaints

Let me now put the well draw-down issue in perspective. I have represented the Town of Monroe Planning Board for over twenty years. Expressions of fear of well draw-down when new development is proposed is the norm in the Town of Monroe. I have heard dozens of property owners complain at public hearings on new subdivision applications over the years that their wells have gone dry when a single neighbor built a house nearby, requiring them to drill their wells deeper only to be forced to do the same thing again when yet another new neighbor built a house.

Tom Cusack, the Town of Monroe hydrogeologist, was asked to study the problem and report to the town board. The report he provided resulted in the town board authorizing me to draft a local law proposing that all new wells in the town be drilled to a depth sufficient to provide sustained flows. From the proposed local law (full copy attached):

§55–5. Depth requirements.

- A. All private wells serving a residence shall be drilled to a depth the deeper of either 350 feet or 100 feet below reaching the point of fracture which provides a sustained flow (following a four-hour test) of the following minimum gallons per minute (gpm):
 - (1) A sustained flow of at least 5 gpm for a 3-bedroom dwelling;
 - (2) A sustained flow of at least 6.5 gpm for a 4-bedroom dwelling;

- (3) A sustained flow of at least 7.5 gpm for a dwelling with 5 or more bedrooms.

The proposed local law explained the rationale for this requirement:

- It has become apparent within the Town of Monroe that the common practice, in constructing wells, of drilling and completing whenever the first significant water-bearing zone is encountered has resulted in a need for a significant number of homeowners to frequently and repeatedly re-drill their wells in order to maintain an adequate, long term water supply.
- From these foregoing findings, it is the determination of the Town Board that, in order to protect the health, welfare and safety of the residents of the Town of Monroe, there should be a procedure requiring that private wells serving residential structures be drilled to a sufficient depth to ensure that all such private wells in the Town can maintain an adequate, long term water supply.
- It is the further finding of the Town of Monroe Town Board that, to protect the public interest and welfare, all private wells drilled within the Town after the effective date of this local law shall be required to comply with the provisions of this local law and shall be subject to issuance of a well construction permit and a certificate of compliance as a pre-condition to issuance of a certificate of occupancy for any residence constructed after the effective date of this law.

While the well-depth provisions of this local law were—for several reasons—never enacted, the planning board succeeded, during the same time frame, in convincing the town board to enact the “Ground Water Supply Testing for Realty Subdivisions” provisions of the law (Section 4) that have since imposed a requirement and protocol for well testing for all subdivisions, a requirement and protocol far more rigorous than the well testing requirements imposed by the health department. As you know, Tom Cusack frequently works with the planning board in devising and supervising well draw-down testing for projects before the planning board whenever required.

Before you granted your approval to Mikvah Yisroel, Tom Cusack supervised a well testing program for the mikvah’s well, monitoring several surrounding wells for draw-down problems, including Mr. Artraud’s² well. That monitoring was done in May of 2014. The monitoring results were reported to Mr. Artraud. Mr. Cusack concluded that sustained pumping of the Mikvah well showed “minor water-level fluctuations... [in Mr. Artraud’s well, but found that]... no water-level drawdown [was] discernable... attribute[able] to pumping of the well on the Mikvah property.”

When Mikvah Yisroel applied to modify the use of its property to include a children’s school component, the town (through its zoning board of appeals) further examined the

² Kate did not tell me during our conversation on Monday the name of the elderly gentleman she spoke with. However, I now know that his name is Rene Artraud.

potential for well draw-down³ by the proposed change of use during three meetings spanning two months.

While the lack of prompt reporting to your board of a neighbor complaint here is unfortunate, you now know of that complaint and you will be given the same data that the zoning board relied upon before you hold a public hearing on this matter. I am sure that your board will carefully review all issues and complaints before acting. Meanwhile, I caution all members of the planning board not to speak to Mr. Artraud directly but to wait until the public hearing is held so you all acquire the information in the same way.

Last, let me say that your board, over a history of many years, has heard and studied well draw-down complaints in a thorough and scientific fashion. Your consistent handling of well draw-down issues should not be criticized. Instead, it should be held up as a model for other communities to follow.

Very truly yours,



MICHAEL H. DONNELLY

Enclosure: Proposed Local Law

cc: Planning Board Members
Town Board Members
Kathryn Troiano
Brian Nugent, Esq.

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³ The zoning board concluded, “upon considerable review that the project will not adversely impact private or public water resources.”